



**Office of the Attorney General
Robert E. Cooper, Jr.**

NEWS RELEASE

FOR IMMEDIATE RELEASE

Feb. 15, 2007

#07-11

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**ATTORNEY GENERAL REQUIRES 30-DAY ALTERNATIVE SUGGESTION PERIOD
BEFORE SALE OF FISK STIEGLITZ COLLECTION PAINTINGS**

Tennessee Attorney General Bob Cooper is requiring Fisk University to delay by 30 days its proposed sale of two of the financially troubled university's prized Stieglitz Collection paintings. The Attorney General wants to give the public an opportunity to propose alternative financing that would keep the two major works of American art at Fisk.

In a letter to representatives of Fisk University and the Georgia O'Keeffe Museum, General Cooper has directed Fisk to publicize the proposed sale of O'Keeffe's "Radiator Building-Night, New York" and "Painting No. 3" by Marsden Hartley in the local and national press. His purpose is to provide the community an opportunity to propose financing that would "allow one or both paintings to remain on display with the remainder of the Stieglitz Collection."

If, by the end of the 30-day period, General Cooper determines that sufficient funds have not been committed to preserve the collection, he will give final approval to an agreement between Fisk and the Museum. That agreement will send the O'Keeffe painting to the Museum's facility in Sante Fe, New Mexico, in return for \$7 million and will clear the way for Fisk to sell the Hartley on the art market with certain conditions.

In his letter, General Cooper stated that he is requiring the 30-day solicitation period in order to allow the community "to act and preserve a local artistic treasure." "The importance and significance of the Stieglitz Collection to Nashville's art community and to historically black colleges and universities cannot be overstated," General Cooper said in his letter. "It is no exaggeration to say that if it sells these paintings, Fisk will lose the artistic heart of the Stieglitz Collection."

General Cooper noted "the current and historic importance of Fisk University to Nashville and the nation" and also acknowledged that Fisk University faces extreme financial problems that must be addressed. Accordingly, if Fisk cannot procure alternative financing, General Cooper concluded that "the preservation of the collection is not worth the risk of financially crippling one of the preeminent historically black colleges and universities in the nation" and will allow the sale of the paintings to go forward.

By law, the Attorney General has supervisory duties of any charitable gift to Tennesseans. Renowned American artist Georgia O'Keeffe gave Fisk the Stieglitz Collection in 1949 as a gift from the estate of her famed photographer husband Alfred Stieglitz. The Collection includes paintings by O'Keeffe and other prominent early 20th Century American artists, prints by Renoir and Cezanne as well as Stieglitz photographs. New York's Christie's Appraisals, Inc. estimated the potential value of each of the two paintings in question at \$8.5 million.

Fisk asked the Attorney General's Office to approve the sale before filing a petition in Chancery Court. The Georgia O'Keeffe Museum through its predecessor entity, the Georgia O'Keeffe Foundation, intervened, citing certain conditions O'Keeffe apparently placed on the gift. Those conditions allegedly include that the Collection be exhibited to the public and a prohibition against loaning or selling any of the art. The Museum asserted in its intervention that if any part of the Collection is sold, the gift would be void and the entire Collection would revert to the Museum, because the museum is the successor to the O'Keeffe estate.

In addition to the proposed painting sales, Fisk and the Museum have agreed Fisk will provide up to \$560,000 from the sale of the paintings to restore Fisk's Van Vechten Gallery to properly display and protect the remainder of the Collection as part of the settlement.

The Attorney General has instructed the University to use its best efforts to publicize the Attorney General's letter throughout the state and to any potentially interested parties to find an alternative to the settlement agreement. If at the end of the 30-day period the Attorney General does not find there is enough money committed to keep one or both of the paintings at Fisk in a manner consistent with the apparent terms of the O'Keeffe gift or terms likely to be approved by the Chancery Court, he will approve the agreement.

(A copy of the letter is attached to this press release.)

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Office of the Attorney General



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February 15, 2007

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RE: *In the Matter of Fisk University, as recipient of a gift from Georgia O'Keeffe, etc.*
Davidson County Chancery No. 05-2994-III

Dear Messrs. Bone and Harbison:

It has been a pleasure to meet with you over the last two months to discuss the public interest in the status of the Stieglitz Collection, which is owned by Fisk University and is one of the preeminent art collections in Tennessee.

Your clients, Fisk and the Georgia O'Keeffe Museum, have asked this Office to approve a settlement of disputed legal claims concerning the collection. You are seeking approval from my Office pursuant to the supervisory duties that it exercises on behalf of the people of the State of Tennessee as the beneficiaries of any charitable gift. *See* Tenn. Code Ann. § 35-13-110. As explained in more detail below, this Office is willing to approve the settlement conditionally. The approval will become final only after the Nashville and Tennessee communities are given a thirty-day opportunity to provide an alternative to the sale described in the settlement.

The legal claims at issue arise from a lawsuit Fisk has filed in Davidson County Chancery Court asking for permission to sell the two most valuable works in the Stieglitz Collection. Fisk states that the sale of the two paintings is essential to the University's continuing financial health. The University asserts that it is suffering from serious financial difficulties that not only impair its ability to stabilize, restore, protect and display the Stieglitz Collection but more significantly place at risk the financial viability of the institution. The University proposes to use the proceeds of the sale to implement a business plan to place the

university on a “sound financial footing,” including payment of some of the funds into its endowment, and to expend up to \$560,000 to stabilize and restore the Van Vechten Gallery on the Fisk campus in order to restore its use for display of the remainder of the Stieglitz Collection.

Fisk received the Stieglitz Collection as a gift from the estate of Alfred Stieglitz and the renowned American artist Georgia O’Keeffe in 1949. The collection consists of 101 pieces of art, including a number of significant early twentieth century American paintings as well as prints by Renoir and Cezanne and photographs by O’Keeffe’s husband, Alfred Stieglitz. In a report dated July 1, 2005, Christie’s Appraisals, Inc., of New York estimated the total appraised value of the collection at over \$33 million and estimated the value of the two paintings at issue at \$8.5 million each.

The importance and significance of the Stieglitz Collection to Nashville’s art community and to historically black colleges and universities cannot be overstated. Of the 105 historically black colleges and universities in this country, only some thirty of them have art collections, and none matches the depth and extensiveness of the collection at Fisk. For the art community in Nashville, the Stieglitz Collection, together with the Cowan Collection at the Parthenon and the collections at Cheekwood, have been recognized as presenting a solid survey of American art in the nineteenth and first half of the twentieth centuries.

The two paintings that Fisk seeks to sell from the collection are the *Radiator Building-Night, New York* by Miss O’Keeffe and *Painting No. 3* by Marsden Hartley. The fact that these two works of art represent half of the financial value of the collection is only one illustration of their importance within the collection. These paintings are both considered to be major works by these artists and seminal pieces in the development of twentieth century American art. It is no exaggeration to say that if it sells these paintings, Fisk will lose the artistic heart of the Stieglitz Collection.

Based upon correspondence between Miss O’Keeffe and Fisk, Miss O’Keeffe is believed to have placed certain conditions upon the gift, including a requirement that the collection be exhibited to the public intact and a prohibition against loaning any items from the collection. Because the bequest takes the form of a charitable gift, Fisk approached this Office in 2005 to seek its approval of the sale before filing its petition in Chancery Court. In a letter dated December 6, 2005, this Office stated that it would not object to the relief sought by Fisk in its complaint on the conditions that Fisk use its best efforts to sell the paintings to a purchaser in Tennessee and that, as a condition of the purchase, the purchaser state in writing that it would assure to the public, under reasonable regulations, access to the paintings to promote the study of art.

The Georgia O’Keeffe Museum, through its predecessor entity the Georgia O’Keeffe Foundation, intervened in the lawsuit filed by Fisk and sought to enforce the condition Miss O’Keeffe is alleged to have placed on the gift that the Collection not be sold. The Museum is a New Mexico nonprofit corporation that operates in Sante Fe, New Mexico, and is the successor-in-interest to rights held by the estate of Miss O’Keeffe. The Museum alleges that if any part of

the Collection is sold, the gift would be void and the entire Collection would revert to the Museum.

Fisk and the Museum have now entered into a Settlement Agreement to resolve the lawsuit. According to the terms of the Agreement, the parties have agreed that the Museum will purchase the *Radiator Building* for \$7 million according to specified payment terms and move the painting to its New Mexico facilities. The Museum further agrees to make the painting reasonably available to the public for the study of art in accordance with its usual practices for ten years.

The Agreement also provides that the University may sell Hartley's *Painting No. 3* without opposition by the Museum. The Agreement further provides that: (1) the University will use its best efforts to sell the painting to a purchaser in Tennessee with the understanding that using its best efforts does not mean that the University is obligated to accept a lesser purchase price only because the prospective purchaser meets this condition and (2) that as a condition of the purchase, the purchaser will state in writing that, so long as the art work is owned by the purchaser, it will assure to the public, under reasonable regulations, access to the painting to promote the study of art.

Finally, the University agrees that, from the proceeds of the sale of these two paintings, it will expend up to \$560,000 to stabilize and restore the Van Vechten Gallery so that the remainder of the Stieglitz Collection may be properly exhibited and protected.

Tenn. Code Ann. § 35-13-110(a) provides that

[i]n all court actions directly affecting the amount, administration or disposition of a charitable gift or a discretionary charitable gift, the court may require that the attorney general and reporter be made a party to represent the charitable beneficiaries, potential charitable beneficiaries and all citizens of the state of Tennessee in all legal matters pertaining to the amount, administration and disposition of a charitable gift or discretionary charitable gift.

Subsection (b) of that statute further provides that

[i]t is unlawful to settle any litigation concerning the validity of a charitable gift or discretionary charitable gift without first obtaining the approval of the court. The court shall approve a settlement only after determining that the interest of the people of the State of Tennessee, as true beneficiaries of any charitable gift, has been served.

In accordance with this statutory prescription, paragraph 2(c) of the Settlement Agreement requires that “[p]rior to execution of this Agreement, Fisk shall have received the final, binding

affirmative consent of the Tennessee Attorney General to this Agreement and the Settlement, acceptable in substance to the O'Keeffe Museum."

This Office has reviewed the proposed Settlement Agreement. It has met on several occasions with Fisk President Hazel O'Leary and has inspected the financial books and records of the University to determine the financial necessity of this transaction. It has reviewed the appraisal of the Stieglitz Collection prepared by Christie's in 2005 and other material relating to sale prices of art work created by Miss O'Keeffe and Mr. Hartley in order to assess the fairness of the purchase price offered by the Museum. Based on this review, it is clear that the University's financial viability depends upon a significant infusion of new funds and that the Stieglitz Collection is the most marketable asset to raise those funds. It also appears that the price offered for the *Radiator Building* by the Museum is reasonable, recognizing that the painting has never been previously sold and therefore any estimate of its value is only approximate.

The proposed Settlement Agreement, of course, is inconsistent with Miss O'Keeffe's apparent instruction to maintain the collection intact, as it will result in the sale of the two most significant pieces in the collection and the removal some 1,200 miles from Nashville of at least one of the pieces. The loss of these great works of art would be felt not just by Fisk, which has displayed them for over fifty years, but also by the Nashville and Tennessee communities, on whose behalf this Office is charged to act. In weighing this loss, however, against the current and historic importance of Fisk University to Nashville and the nation, this Office must conclude that the preservation of the collection is not worth the risk of financially crippling one of the preeminent historically black colleges and universities in the nation.

It is also this Office's belief that all possible strategies to preserve the collection in its entirety at Fisk must be explored before the Office will give "final, binding affirmative consent" to the settlement. In this regard, recent events at Thomas Jefferson University in Philadelphia, Pennsylvania, are instructive. There, the university sold Thomas Eakins's 1875 masterpiece, *The Gross Clinic*, for \$68 million to the National Gallery of Art in Washington, D.C., and the Crystal Bridges Museum of American Art in Bentonville, Arkansas, to help fund the university's \$300 million strategic plan. The sales agreement, however, included a clause that allowed Philadelphia institutions to purchase the painting at the same price within forty-five days. Through the collective efforts of local politicians, museums, foundations and corporate leaders, two local museums matched the price and will keep the painting in Philadelphia for public display.

Because of the conditions apparently placed by Miss O'Keeffe on her gift, a similar strategy in this case would be more complex. Even though the amount of money sought by Fisk is lower, any alternative proposal, to be viable, would need to satisfy the apparent terms of the bequest. But the underlying philosophy, to allow the community an opportunity to act and preserve a local artistic treasure, is appropriate in this case as well. This Office therefore believes that the community must be provided an opportunity to propose alternatives to the Settlement Agreement that would result in Fisk receiving funds comparable to those available to

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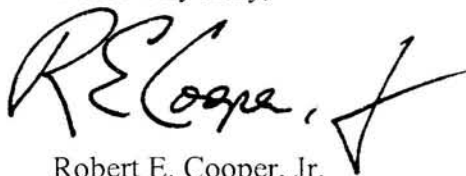
it under the agreement while permitting one or both of the paintings to remain on display at Fisk with the remainder of the Stieglitz Collection in a manner consistent with the apparent terms of the gift or terms likely to be approved by the Court.

Therefore, in accordance with this Office's consistent position that all best efforts should be made to keep the paintings accessible to all Tennesseans, this Office conditions its approval of the Settlement Agreement on the following actions. After receipt of this letter, Fisk will use its best efforts to publicize this letter throughout the state and to any other potentially interested parties, in a manner to be mutually agreed upon between Fisk and this Office. Such publication will begin a thirty-day period during which any interested party will have the opportunity to propose alternative financing that would keep the Stieglitz Collection intact and in place. If, by the end of the thirty-day period, this Office determines in writing that sufficient funds have not been committed to allow one or both of the paintings to remain on display with the remainder of the Stieglitz Collection in a manner consistent with the apparent terms of the gift or terms likely to be approved by the Court, then Fisk shall receive the final, binding affirmative consent of the Tennessee Attorney General to the Settlement Agreement.

In summary, the Attorney General must take into account not only the University's financial situation but also the expressed intent of the donor(s), Miss O'Keeffe and Mr. Stieglitz, and ultimately determine whether the Settlement Agreement is in the best interests of the people of the State of Tennessee as the ultimate beneficiaries of this charitable gift. Having reviewed the proposed Settlement Agreement and other relevant documents and information provided by both the University and the Museum, the Attorney General has determined that the Agreement would appear to further the primary purpose of the charitable gift in that it will allow the University to restore and preserve the other ninety-nine pieces in the collection and to continue to make them available to the public. It would not, however, further the apparent intent of Miss O'Keeffe that the collection remain and be displayed intact. In fact, the Agreement would result in the physical removal of at least one painting, and possibly both, from the state, thereby making these paintings in any practical sense no longer accessible to the citizens of this state. Because of these deficiencies, we believe that conditional approval of the agreement as outlined in this letter appropriately balances the interests of the University and the donor's intent, and ultimately, is in the best interests of the people of this state.

Thank you for your help and we look forward to bringing this matter to a prompt conclusion.

Yours very truly,

A handwritten signature in black ink, appearing to read "R. E. Cooper, Jr.", with a stylized flourish at the end.

Robert E. Cooper, Jr.
Attorney General and Reporter



GEORGIA O'KEEFFE
 Radiator Building Night, New York, 1927
 Oil on canvas
 48 x 30 inches



Marsden Hartley
 Painting No. 3, 1913
 Oil on canvas
 42 x 34 1/2 inches